IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9523 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARATBHAI SHANKERBHAI MAISURIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9523 of 2001

MR AR SHAIKH for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 15th August, 2001 passed by the Commissioner of Police, Surat in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a dangerous. The

detaining authority has considered five offences registered against the detenu for theft, punishable under Sec. 379 of IPC. The detaining authority has also considered statements of two anonymous witnesses dated 27.6.2001 and 30.6.2001, which have been verified on 8th August, 2001 and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public order.

3. Learned Advocate for the petitioner has assailed the order on the ground that registered offence relates to theft and there is nothing to indicate any disturbance to public order. So far as statements are concerned, it is submitted that there is no contemporaneous material to indicate that the detaining authority undertook the exercise as propounded by the apex Court in Bai Amina Vs. State of Gujarat, reported in 22 GLR 1186. He submitted that there is no material to indicate that the power was properly exercised by the detaining authority under Section 9(2) of the PASA Act after undertaking due enquiry and verification regarding genuineness of the fear expressed by the witnesses and the need for use of power under Section 9(2) of the PASA Act, in comparison to the right of the detenu envisaged under Art. 22 of the Constitution of India.

4. Learned AGP Mr. S.S. Patel has opposed this petition.

5. Considering rival side contentions, it is clear that the registered offence relate to theft only. There is nothing to indicate that there is any disturbance to public order and therefore cannot form the basis for recording satisfaction that the activities of the detenu were detrimental to public order.

5.1 So far as statements are concerned, verification dated 8.8.2001 indicates that the witnesses were interrogated for verifying whether the fear expressed by them was genuine. There is no other material contemporaneous in nature to indicate that the detaining authority cross-checked the version of the anonymous witnesses to ascertain that the fear is genuine and not imaginary or a camaflague to cover up his own acts. Absence of such material would vitiate the exercise of powers under Sec. 9(2) of PASA Act, resulting into infringement of the right of the detenu envisaged under Art. 22(5) of the Constitution of India. The order of detention therefore cannot be permitted to stand. Petition therefore, deserves to be allowed.

6. The petition is therefore, allowed. Order of detention dated 15.8.2001 passed by the Commissioner of Police, Surat is quashed and set aside. Detenu Bharatbhai Shankerbhai Maisuriya be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas